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NORTHERN DISTRICT OF CALIFORNIA

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

MATTHEW ELVEY, an individual, and
GADGETWIZ, INC., an Arizona
corporation, on their own behalf and on
behalf of all others similarly situated,

Plaintiffs

v.

TD AMERITRADE, INC., a New York
corporation, and DOES 1 to 100,

Defendants.

Case No. C 07 2852 MJJ

**STIPULATED [~~PROPOSED~~] ORDER
REMOVING HEARING DATES ON
MOTIONS TO DISMISS AND FOR
PRELIMINARY INJUNCTION FROM
COURT CALENDAR**

Judge: Martin J. Jenkins

GROUND

1. Plaintiffs Matthew Elvey and Gadgetwiz.com filed a First Amended Complaint against Defendant TD Ameritrade, Inc. ("TD Ameritrade"), on June 28, 2007, and Motion for Preliminary Injunction on July 10, 2007.

2. TD Ameritrade filed a Motion to Dismiss the Plaintiffs' First Amended Complaint on July 18, 2007.

3. On July 20, 2007, the parties filed a stipulated proposed order, entered by the Court on July 26, 2007, extending the briefing schedules and continuing the hearing date for the Motions to September 18, 2007.

4. On September 10, 2007, the parties filed a stipulated proposed order, entered by the Court on September 12, 2007, continuing the hearing date on the Motions to October 2, 2007.

5. The sharing of information and meetings between the Parties set forth in Paragraph 8 of the September 10, 2007 request for adjournment are ongoing and lead the Parties to conclude that the interests of the parties, as well as the interests of judicial efficiency would be best served by removing the Motion for Preliminary Injunction hearing and Motion To Dismiss hearing from the Court's calendar.

STIPULATION

1. IT IS HEREBY STIPULATED, pursuant to Local Rule 6-2, that Plaintiffs' Motion for Preliminary Injunction and TD Ameritrade's Motion to Dismiss shall both be removed from the Court's October 2, 2007 calendar.

2. IT IS FURTHER STIPULATED, that Plaintiffs or TD Ameritrade may re-notice their respective Motions at anytime hereafter on ¹⁴~~ten~~ days notice. *myd*

3. IT IS FURTHER STIPULATED that this stipulation shall not be construed to reflect the position of any of the parties concerning the urgency or absence of any urgency of the relief sought in the Motion for Preliminary Injunction.

IT IS SO STIPULATED, THROUGH COUNSEL.

Date: September 24, 2007

By:

Alan Himmelfarb / L#2
Alan Himmelfarb
Counsel for Plaintiffs Matthew Elvey and
Gadgetwiz, Inc. and the putative class

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2
3
4 Date: September 24, 2007

By: 

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Counsel for Defendant
TD AMERITRADE, Inc.

9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 IT IS SO ORDERED.

11
12 Date: 9/26/2007

By: 

THE HONORABLE MARTIN J. JENKINS
UNITED STATES DISTRICT COURT JUDGE